WP(C) 3438/2006
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA
JUDGMENT AND ORDER (ORAL)

The challenge made in this writ petition is the Annexure-7 notification dated 3rd July, 2006 by which the Arunachal Pradesh Public Service Commission, under the signature of its Secretary, has notified the selection for appointment of the incumbents named therein as Junior Specialist Doctors in the disciplines mentioned against each candidate.

2. The petitioners as well as the private respondents are the MBBS degree-holders with Post Graduate degree/diploma in different streams. In response to the advertisement dated 24th January, 2006 for 31 posts in different disciplines, the petitioners and the private respondents along with others offered their candidatures. It is submitted that for 31 posts, only 50 applications were received. In terms of the advertisement, in which it was notified that the selection would be made through viva voce test and interview only, the selection was conducted by the Public Service Commission and pursuant to such selection, the impugned notification dated 3rd July, 2006 has been issued notifying the selection for appointment of the 25 candidates named in the notification for various disciplines. While the private respondents have been selected for appointment, the petitioners have not been selected.

3. The primary ground on which the petitioners have challenged the entire selection process initiated by the aforesaid advertisement and the selection of the private respondents is that the private respondents having not fulfilled the requirement of experience as per the rules, which is 3 years for P.G. degree holders and 5 years for diploma holders, the Public Service Commission could not have selected the private respondents. It will be pertinent to mention here that out of 10 petitioners, 4 petitioners also do not conform to the requirement of the requisite experience. In Para-12 of the writ petition, a statement has been made that all the petitioners are having requisite qualification prescribed under the advertisement and thus, they duly applied in response to the advertisement dated 24.1.2006. In Para-16 of the writ petition, the petitioners have admitted that out of the 10 petitioners, the petitioners No.6, 7 and 8 do not have the requisite experience as prescribed in the rules. However, according to the private respondents, the petitioner No.3 also does not have the requisite experience.

4. At this stage, it will be appropriate to refer to the relevant rules since the entire argument of the learned counsel for the parties is based on the prescribed experience in the rules and the relaxation extended in respect of such experience. The rule holding the field is the Arunachal Pradesh Health Services Rules, 2001. As per Schedule 5 to the Rules, for the post of Junior Specialist, with which we are concerned, there is requirement of 3 years experience in the concerned speciality after obtaining the P.G. Degree and 5 years experience after obtaining P.G. Diploma. Thus, while 3 years experience is the requirement for P.G. Degree holders, it is 5 years experience, which is required for P.G. Diploma holders.

5. As per Note-2 appended to the aforesaid clause regarding the experience, the experience is relaxable at the discretion of the Commission in the case of the candidates belonging to the Scheduled Castes and Scheduled Tribes, if at any stage of the selections, the Commission is of the opinion that sufficient number of candidates from these communities possessing requisite experience, are not likely to be available to fill up the vacancies, reserved for them. In the instant case, it is an admitted position that altogether 50 candidates applied for this specified 31 posts and out of which only 20 Scheduled Tribes candidates and 2 general category candidates were found to be eligible for appointment as per the rules. Thus, the requirement of experience for filling up the 31 posts f

ell short generally. Discipline-wise was also, there was shortage of candidates .

6. In the above context, the private respondents in their counter affidavit have stated in Para-19 that against the 4 posts of Ophthalmology, although ther e were 4 applicants but only 3 candidates turned up for interview and all of the m were selected. Similarly, 4 posts of Pathology were advertised but only 3 can didates applied and all the 3 candidates have been selected. In Para-23 of the counter affidavit, the private respondents have questioned the very locus stand i of the petitioners to make the challenge to the selection in respect of the branches mentioned therein, since the petitioners were not the candidates for ap pointment against the posts of thwe said disciplines.

7. According to the petitioners, the respondents could not have relaxed the requirement of 3/5 years experience and even if, any relaxation was extended, the same ought to have been made public. The basic facts towards making the cha llenge to the very selection of the private respondents and others could be fou nd in Para-15 of the writ petition in which the petitioners have stated that th e selected candidates, more particularly, the private respondents did not have requisite experience as per the rules, but yet, they have been selected for appo intment. As noticed above, out of 10 petitioners, at least, 4 petitioners al so do not have requisite experience.

8. In the counter affidavit filed by the State of Arunachal Pradesh Public Service Commission and the private respondents, the stand of the petitioners in the writ petition has been controverted. It has been stated that the action tak en in the matter of selection of the candidates was strictly as per the rules. As regards the relaxation extended in respect of experience prescribed in the r ules, it is the stand of the respondents that such relaxation was extended havi ng regard to the fact that sufficient number of candidates, more particularly, t he Scheduled Castes and Scheduled Tribe candidates belonging to the State with the requisite experience were not available. In the additional affidavit filed by the Public Service Commission on 22.1.2007, it has been stated that out of 50 candidates, 47 candidates belong to Scheduled Tribes category and the remaini ng 3 candidates are general category candidates. The break up of the candidates discipline-wise has also been indicated.

9. The Selection Committee was comprised of the Chairman and 3 other member s. The interview was conducted at Gauhati Medical College, Guwahati during the period from 26.6.2006 to 28.6.2006, in which the petitioners as well as the priv ate respondents and others duly participated. On the basis of the interview so conducted by the appointed Selection Committee, the merit list was prepared and published on 3.7.2006 and the same was forwarded to the Government. In Para-9 o f the additional affidavit filed on 22.1.2007, the Commission has indicated the number of candidates selected discipline-wise.

10. As regards the question of relaxation, on which much emphasis has been placed by the petitioners, it has been stated that the Commission acted in tune with the power of relaxation. As per Note-2 appended to the relevant rules th e experience of 3/5 years can be relaxed. The minutes of the meeting held on 17 .5.2006 towards relaxation of experience 3/5 years has been annexed as Annexure -R/7 to the additional affidavit. On perusal of the minutes, what has transpired is that the Commission scrutinized the applications submitted by the candidates in response to the aforesaid advertisement and upon such scrutiny, it was found that there was hardly any candidate having 3/5 years experience in the respecti ve branches after obtaining P.G./Diploma, as required in terms of the aforesaid rules and accordingly.

11. In the above context, it will be appropriate to mention that some of th e posts in question were earlier advertised in 2001, to be precise, on 2.6.2001.

On that occasion, altogether 17 posts were advertised. By notification dated 27.1.2001, the relaxation was provided in respect of the experience. In the minutes of the Arunachal Pradesh Public Service Commission meeting held on 17.5.2007, the relaxation extended in 2001 has also been referred to. Once the relaxation in respect of the experience was provided by the Commission, the candidates irrespective of possessing the experience or not, they became eligible to sit in the interview/selection. Relaxation was extended in view of dearth of sufficient numbers of candidates having the requisite experience and such relaxation was as per the rules.

12. After the aforesaid process of relaxation was initiated and completed, the candidates were called for interview by issuing call letters on 25.5.2006. Thereafter, as noted above, the interview was conducted at Gauhati Medical College premises during the period from 26.6.2006 to 28.6.2006, in which the petitioners and the private respondents along with others participated. Thereafter, the Select List was published on 3.7.2006.

13. Mr. S.S. Dey, learned counsel for the petitioners, placing reliance on 3 decisions of the Apex Court , reported in (1997) 2 SCC 554 (Sodagar Singh v. State of Punjab and others), (2006) 9 SCC 507 (Malik Mazhar Sultan and another v. U.P. Pubic Service Commission and others) and (2006) 9 SCC 670 (Indian Institute of Technology and another v. Paras Nath Tiwari and others) submits that the power of relaxation could not have been extended to the extent of relaxing the recruitment rules itself. He further submits that in case of any conflict between the recruitment rules and the advertisement, it is the recruitment rules which will prevail over the advertisement. The submission has been made in view of the fact that in the advertisement, there was no mention regarding requirement of experience of 3/5 years.

14. Mr. B. Banerjee, learned Sr. Government Advocate, Arunachal Pradesh countering the above argument, submits that the writ petition is misconceived. According to him, the petitioners are estopped from making challenge to the selection process. They themselves having participated in the same with their eyes wide open relating to the grievance now raised in the writ petition. He has referred to the decision of the Apex Court as reported in AIR 2007 SC 254 (Sanjay Kumar Manjul v. Chairman, U.P. S.C. and others). In Para-27 of the judgment, it has been observed that while making a direct recruitment to a higher post, the Commission must have jurisdiction to relax the rules and that the power of relaxation must also be expressly conferred.

15. Ms G. Deka, learned counsel representing the Public Service Commission, referring to the aforementioned additional affidavit filed on 22.1.2007, submits that the Commission has acted bona fide in the matter and the petitioners having participated in the selection process, cannot now turn round the same so as to question the validity of the same.

16. Mr. D.K. Misra, learned senior counsel, assisted by Ms S. Jahan, learned counsel representing the private respondents, has referred to various dates relating to the selection. He submits that the petitioners having confined the challenge to the selection of only the private respondents (numbering 14) out of 25 selected candidates, in absence of the remaining selected candidates in this proceeding, no adverse order can be passed in respect of the selection. He further submits that when as per own admission of the petitioners, at least 4 of the 10 petitioners do not possess the qualification regarding experience, they are precluded from making the challenge to that very aspect of the matter and that too, after availing the benefit of relaxation extended by the Commission. He further submits that since the petitioners were not the candidates in respect of the disciplines mentioned in Para-23 of the counter affidavit filed by the private respondents, the petitioners cannot make a challenge in respect of the selection of candidates against those disciplines.

17. Placing reliance on the decisions of the Apex Court as reported in 1986 (Supp) SCC 285 (Om Prakash Shukla v. Akhilesh Kumar Shukla and others) and (2006) 6 SCC 395 (K.H. Siraj v. High Court of Kerala and others), Mr. Misra submits that the petitioners having taken the calculated chance for favourable consider ation with the parameters of relaxation provided, cannot now turn round and qu estion the very legality and validity of the relaxation provided by the Public S ervice Commission.

18. Mr. S.S. Dey, learned counsel for the petitioners, in his reply, has sub mitted that since the process of relaxation was initiated and completed without following the due procedure and such relaxation is confined in the file only w ithout there being any publication such relaxation is not valid in the eye of l aw. According to him, such relaxation ought to have made public as was done i n the case of the earlier selection, for which the advertisement was issued on 6 .8.2001. It is his submission that on that occasion, the relaxation regarding ex perience having been provided by express notification dated 27.8.2001, in the p resent case also, such relaxation ought to have made public by issuing notificat ion and could not have been confined in the file only.

19. I have given my anxious consideration to the submissions made by the lea rned counsel for the parties. There is no dispute that the petitioners never r aised any grievance relating to relaxation extended to or in respect of any of t he clauses in the advertisement. They participated in the selection process by o ffering their candidatures and took a chance for favourable consideration. Howe ver, when they did not find their names in the impugned select list dated 3.7.20 06, made a challenge to the very selection process and the selection of the priv ate respondents. The prayer made in the writ petition is to quash the entire sel ection process convened and contained vide the aforesaid advertisement dated 24. 1.2006 and so also, to set aside and quash the entire select list, more particul arly, the selection of the Respondents No.3 to 16. Further prayer made is not to make any appointment from the impugned select list.

20. From the above prayers made in the writ petition, it will be seen that t he petitioners have questioned the very validity of the selection process in whi ch they duly participated without raising any objection. Further, if the select list containing the name of 25 selected candidates, is to be quashed, the same will lead to affecting the rights of the remaining 9 candidates, who are not t he party in this writ proceeding. In the case of Probodh Kumar Verma v.State of U.P. , reported in AIR 1985 SC 167, the Apex Court has observed that high Cou rt ought not to decide a writ petition under Article 226 of the Constitution wit hout the person who would be vitally affected by its judgment.

21. In Om Prakash Shukla (supra), the Apex Court has observed that the appe llants/petitioners in that case having participated in the interview, it was not open to turn round thereafter when they failed in the interview and then to co ntend that the provision of minimum marks in the interview was not proper. In t he instant case also, as noticed above, the petitioners participated in the sele ction process taking a chance for a favourable consideration without any reserva tion and now, they cannot turn round the same so as to question the very validit y of the selection process. In the case of Suneeta Aggarwal v. State of Haryana and others as reported in (2000) 2 SCC 615, the Apex Court having found that t he petitioners therein not only applied for the particular post but also appeare d before the selection committee constitutedit was held that the appellant ther ein having appeared before the selection committee without any protest and havin g taken a chance for favourable consideration, she was estopped by her own condu ct from challenging the order of the authority.

22. Much emphasis has been put in the decision of the Apex Court in the case of Sodagar Singh (supra). That was also a case relating to relaxation of recru

itment rules. Rule 8 of the Punjab Roadways (Ministerial) State Service Class I II Rules, 1977 provided that no person shall be appointed to the service unless he has requisite qualifications and experience, as specified in the particular c olumn. On a reading of Rule 8, the Apex Court found that was no clause for rel axation. It was under the circumstances that it was held that the Government cou ld not have provided relaxation to the candidates.

23. In the instant case, the rule itself provides for relaxation of requirem ent of experience. Being empowered with such relaxation power, the Public Servi ce Commission has relaxed the rules. The Apex Court in the case of M. Venkatesw arlu and others v. Govt. of A.P. and others, reported in (1996) 5 SCC 167 deal ing with the power and jurisdiction for relaxation of rules, upheld the decision to relax the rules prescribed for requisite length of service. A question was raised that by providing such relaxation, the right of other persons was affect ed. It was held that in such circumstances, no notice to the affected person was to be given. It was held that where the object would be frustrated, it must be applied in its own force. It was observed that relaxation may be given to a clas s of person or even individual. The test of justice and equity and envisaged in the particular rule was emphasized in the background of the case.

24. In Sandeep Kumar Sharma v. State of Punjab and others, reported in (1997) 10 SCC 298, the Apex Court noticing the recruitment rules, providing relaxatio n held that such rules of relaxation must get a pragmatic construction so as to achieve effective implementation of the requirement. It was held that the power of relaxation, even if, generally included in the Service Rules either for the purpose of protecting hardship or to meet special and deserving situation and ot her, such rules must be construed liberally. In the instant case, it is on reco rd that adequate number of experienced candidates were not available and this is precisely the reason as to why the Public Service Commission invoked its power under the particular rule providing relaxation in respect of experience. At le ast 4 of the 10 petitioners are also the beneficiaries of such relaxation, with which that they participated in the selection.

25. As regards the submission of Mr. Dey, learned counsel for the petitioner that the relaxation provided must have been made public, suffice is to say that the relaxation provided was general and the Commission was empowered to do so a t any stage of the selection. The relaxation was provided as per the express pro vision in the rule upon scrutiny of the applications and when it was found that sufficient number of candidates with the requisite experience were not available . Four of the petitioners are also the beneficiaries of such relaxation who have now turned round the same. Had the petitioners been selected, they would not ha ve made any grievance against such relaxation. In fact, Mr. Dey, learned counsel for the petitioners during the course of his submissions has made the same know n

26. For all the aforesaid reasons and discussions, I am of the considered op inion that there was nothing wrong in providing relaxation in respect of experie nce for the purpose of selection of candidates for the post of Junior Specialist s. Consequently, the selection made on that basis cannot be inteferred with. Th us, the prayer for interference with the entire selection process including the selection of all the candidates and the private respondents cannot be granted.

27. In view of the above, the writ petition is dismissed. Interim order pass ed on 21.7.2006, modified on 16.8.2006 in Misc Case No.2840/2006 stands vacated. The respondents shall now proceed with the matter in accordance with law.